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12
13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA
15

16 **California Department of Toxic Substances**
17 **Control,**

18 Plaintiff,

19 v.

20 **Payless Cleaners, et al.,**

21 Defendants.
22

Civ. S-02-2389 LKK DAD

**SETTLEMENT AGREEMENT AND
CONSENT DECREE BETWEEN
DTSC AND RICHARD PETERS,
RAMONA PETERS, AND THE
PETERS FAMILY TRUST**

23 **INTRODUCTION**

24 Plaintiff, the California Department of Toxic Substances Control (“DTSC”), filed a
25 second amended complaint on December 8, 2004, (the “Complaint”) in the United States
26 District Court for the Eastern District of California (the “Court”), pursuant to the
27 Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42
28 U.S.C. §§ 9601 et seq., and California state law governing the release of hazardous substances,

1 and nuisance. This Consent Decree embodies the settlement reached between DTSC and
2 Defendants Richard Peters, Ramona Peters, and the Peters Family Trust (collectively referred to
3 herein as “Settling Defendants”).

4 The Court, on the motion and with the consent of DTSC and the Settling
5 Defendants, hereby **ORDERS, ADJUDGES, AND DECREES** as follows:

6 1. **DEFINITIONS**

7 A. All terms used in this Consent Decree that are defined in section 101 of
8 CERCLA, 42 U.S.C. § 9601, shall have the same meaning set forth in that section.

9 B. “DTSC,” as used in this Consent Decree, shall mean DTSC, its
10 predecessors including, but not limited to, the Toxic Substances Control Program of the State of
11 California Department of Health Services, and its successors.

12 C. “Southwest Chico Plume” means both the soil and groundwater existing
13 in the shallow, intermediate, and/or lower aquifers underlying the city of Chico mostly south of
14 Big Chico Creek that are contaminated with perchloroethylene and its breakdown products, the
15 area of which is roughly represented by Figure 2 of the “Groundwater Monitoring Report, Third
16 Quarter 2006, Chico Southwest Plume, Chico, California,” dated October 20, 2006 (attached
17 hereto as Exhibit A and incorporated herein by this reference), and all locations where such
18 contaminants may come to be located in the future.

19 D. “Response Costs,” as used in this Consent Decree, shall include all costs
20 of “removal,” “remedial action,” or “response” (as those terms are defined by section 101 of
21 CERCLA), incurred or to be incurred by DTSC in response to the release or threatened release
22 of hazardous substances at, in, or from the Chico Southwest Plume. Said term shall include, but
23 not be limited to, direct labor costs; contractor, consultant and expert costs; travel and any other
24 out-of-pocket expenses; the costs of identifying, developing evidence against, and pursuing
25 claims against persons or entities liable for the release or threatened release of hazardous
26 substances at, in, or from the Chico Southwest Plume; indirect costs; oversight costs; applicable
27 interest charges; and attorneys' fees.

28 E. “Remedial Action Plan,” as used in this Consent Decree, shall mean a

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1 remedial action plan prepared to address the release or threatened release of hazardous
2 substances at, in, or from the Chico Southwest Plume and finally approved by DTSC as
3 described in California Health and Safety Code section 25356.1, and also includes any
4 amendments to the remedial action plan that are subsequently approved by DTSC.

5 F. "Effective Date" is the day on which this Consent Decree is entered as an
6 order of the Court.

7 2. **RECITALS**

8 A. DTSC is the California state agency with primary jurisdiction over the
9 response to the release and threatened release of hazardous substances at, in, or from the Chico
10 Southwest Plume.

11 B. By and through its Complaint, DTSC seeks to recover jointly and
12 severally from the Settling Defendants, and other defendants who are not parties to this Consent
13 Decree, all costs it has incurred in response to releases and/or threatened releases of hazardous
14 substances at, in, or from the Chico Southwest Plume, pursuant to section 107(a) of CERCLA.
15 DTSC also seeks a declaratory judgment that defendants are jointly and severally liable for all
16 additional costs incurred by DTSC in response to the releases and/or threatened releases of
17 hazardous substances at, in, or from the Chico Southwest Plume pursuant to section 113(g)(2) of
18 CERCLA, 42 U.S.C. § 9613(g)(2). DTSC alleges that it will continue to incur Response Costs
19 until the remedy selected in the Remedial Action Plan, and implementation, operation and
20 maintenance of that remedy, is completed. DTSC also seeks injunctive relief to abate a public
21 nuisance (California Health and Safety Code section 58009) and to abate an imminent or
22 substantial endangerment to public health and safety or to the environment (California Health
23 and Safety Code section 25358.3).

24 C. By entering into this Consent Decree, the Settling Defendants make no
25 admission of liability.

26 D. Each of the parties to this Consent Decree represents and acknowledges
27 that, in deciding whether to enter into this Consent Decree, it has not relied on any statement of
28 fact, statement of opinion, or representation, express or implied, made by any other party to this

1 Consent Decree. Each of the parties to this Consent Decree has investigated the subject matter
2 of this Consent Decree to the extent necessary to make a rational and informed decision to
3 execute it, and has had the opportunity to consult independent counsel.

4 E. DTSC and the Settling Defendants agree that settlement without further
5 litigation and without the admission or adjudication of any issue of fact or law is the most
6 appropriate means of resolving this action. This Consent Decree was negotiated and executed
7 by DTSC and the Settling Defendants in good faith to avoid prolonged and complicated
8 litigation. DTSC, moreover, has negotiated and executed this Consent Decree to further the
9 public interest and to protect human health and the environment.

10 3. **JURISDICTION**

11 This Court has jurisdiction over DTSC's federal law claims, which arise under
12 CERCLA, pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b). This Court has jurisdiction
13 over DTSC's state law claims under the supplemental jurisdiction provision of 28 U.S.C. §
14 1367(a) and under 28 U.S.C. § 2201, in that the state and federal claims arise from common
15 facts relating to the release of hazardous substances and remediation of or failure to remediate
16 the resulting contamination. This Court has personal jurisdiction over each of the parties to this
17 Consent Decree. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. §
18 1391(b) and 42 U.S.C. § 9613(b). This Court, further, has the authority to enter this Consent
19 Decree as a consent decree of the Court.

20 4. **SETTLEMENT OF DISPUTED CLAIMS**

21 4.1 This Consent Decree represents a fair, reasonable, and equitable
22 settlement of the matters addressed herein.

23 4.2 For the purposes of this Consent Decree, the Settling Defendants admit
24 none of the allegations of the Complaint. Nothing in this Consent Decree shall be construed as
25 an admission of any issue of law or fact or of any violation of law. Notwithstanding the
26 foregoing, each of the Settling Defendants acknowledges its responsibility pursuant to this
27 Consent Decree to perform those acts it has agreed to undertake in this Consent Decree, and
28 shall not deny such responsibility in any proceeding brought by DTSC to enforce this Consent

Decree.

4.3 Except as set forth in section 11 of this Consent Decree, nothing in this Consent Decree shall prejudice, waive, or impair any right, remedy or defense that the Settling Defendants may have in any other or further legal proceeding.

5. **PAYMENTS BY SETTLING DEFENDANTS**

5.1 Upon the Effective Date, the Peterses shall be liable to DTSC for a total payment of three hundred fifty thousand dollars (\$350,000.00). Within thirty (30) calendar days of the Effective Date, the Peterses shall pay this amount to DTSC as described below in section 5.3.

5.2 The \$350,000.00 payment described in section 5.1 above includes a payment of \$30,000.00 for certain future land use covenant administrative costs to be incurred by DTSC which are specified in the Land Use Covenant to be recorded pursuant to section 6.2 below.

5.3 Payment described in section 5.1 will be made by check made out to the California Department of Toxic Substances Control and identified with the Court's docket number of this case and "Site No. 100504." Payment shall be mailed to:

Department of Toxic Substances Control
Cashier, Hazardous Substance Account
P. O. Box 806
Sacramento, CA 95812-0806

A copy of the check shall be mailed to:

Jim Tjosvold
Chief, Northern California Central Cleanup Operations Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200
Attn: Donald Mandel, Project Manager for Chico Southwest Plume

Timothy E. Sullivan
Office of the Attorney General
P.O. Box 70550
Oakland, CA 94612

1 6. **OBLIGATIONS OF THE PETERSES**

2 6.1 Immediately upon entry of this Consent Decree, the Peterses will require
3 their consultants and contractors to provide to DTSC in electronic format historical site data,
4 site figures, groundwater model files, and word processing files containing the text of final
5 reports previously submitted to DTSC in paper form by the Peterses, to the extent those items
6 are available in electronic format.

7 6.2 Within five calendar days of the Effective Date of this Consent Decree,
8 the Peterses shall record a Land Use Covenant substantially in the form specified in Exhibit B
9 that is enforceable under the laws of California.

10 6.3 Except as otherwise stated in sections 6.1 and 6.2, nothing in this Consent
11 Decree requires the Peterses to conduct or pay for any further work in the Chico Southwest
12 Plume.

13 7. **[RESERVED]**

14 8. **GOVERNMENT LIABILITIES**

15 Neither DTSC nor any other department or agency of the State of California shall be
16 liable for any injuries or damages to persons or property resulting from acts or omissions by the
17 Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither DTSC
18 nor any other department or agency of the State of California shall be held as a party to any
19 contract entered into by the Settling Defendants or their agents in carrying out activities
20 pursuant to this Consent Decree unless the contract is entered into in writing by DTSC or such
21 other department or agency of the State of California.

22 9. **COVENANT NOT TO SUE BY DTSC**

23 9.1 Except as specifically provided in sections 9.2 and 10, below, and except
24 as may be necessary to enforce the terms of this Consent Decree, as of the date this Consent
25 Decree is entered as a consent decree of the Court, DTSC covenants not to sue the Settling
26 Defendants for “Matters Addressed” by this Consent Decree. “Matters Addressed” includes any
27 and all civil liability for reimbursement of all or any portion of DTSC’s Response Costs, past or
28 future, declaratory relief, injunctive relief or any other relief under CERCLA, the Carpenter-

1 Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code sections
2 25300 et seq., or common law for liability for Response Costs and/or response actions, with
3 regard to releases or threatened releases of perchloroethylene and its breakdown products
4 originating at the location known as 254 East First Street, Chico, California (Butte County
5 Assessor's Parcel No. 03-19-0-020), including releases or threatened releases of
6 perchloroethylene and its breakdown products at, in, or from the Chico Southwest Plume, as set
7 forth in the Complaint, and releases or threatened releases of perchloroethylene and its
8 breakdown products at, in, or from the area of contamination known as the Chico Central
9 Plume.

10 9.2 "Matters Addressed" shall not include, and the covenant not to sue set
11 forth in section 9.1 above does not pertain to, any matters other than those expressly specified in
12 section 9.1. DTSC reserves, and this Consent Decree is without prejudice to, all rights, claims
13 and causes of action DTSC may have against the Settling Defendants with respect to all other
14 matters, including releases or threatened releases of hazardous substances in the city of Chico
15 other than: releases or threatened releases of perchloroethylene and its breakdown products
16 originating at the location known as 254 East First Street, Chico, California (Butte County
17 Assessor's Parcel No. 03-19-0-020), including releases or threatened releases of
18 perchloroethylene and its breakdown products at, in, or from the Chico Southwest Plume, as set
19 forth in the Complaint, and releases or threatened releases of perchloroethylene and its
20 breakdown products at, in, or from the area of contamination known as the Chico Central
21 Plume.

22 10. **RESERVATION OF RIGHTS**

23 10.1 The Covenant Not to Sue set forth in section 9.1 above does not pertain to
24 the following matters, which DTSC reserves, and this Consent Decree is without prejudice to all
25 rights and claims of DTSC against the Settling Defendants with respect to the following:

- 26 (a) failure of the Settling Defendants to meet the requirements of this
27 Consent Decree;
28 (b) damage to natural resources, as defined in section 101(6) of CERCLA, 42

U.S.C. § 9601(6), including all costs incurred by any natural resources trustees; and

(c) criminal liability.

10.2 Except as expressly provided in this Consent Decree, nothing in this Consent Decree is intended nor shall it be construed to preclude DTSC from exercising its authority under any law, statute or regulation. Furthermore, nothing in this Consent Decree is intended, nor shall it be construed, to preclude any other state agency, department, board or entity or any federal entity from exercising its authority under any law, statute or regulation.

11. **COVENANT NOT TO SUE BY THE SETTLING DEFENDANTS**

11.1 The Settling Defendants covenant not to sue, and agree not to assert any claims or causes of action against, DTSC, or its contractors or employees, for any costs or damages the Settling Defendants might incur or for any injuries or losses the Settling Defendants might suffer as a result of its performance of the requirements of this Consent Decree. The Settling Defendants further covenant not to sue, and agree not to assert any claims or causes of action against, DTSC, or its contractors or employees, for any and all civil liability for reimbursement of all or any portion of the Settling Defendants' response costs, past or future, declaratory relief, injunctive relief or any other relief under CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code sections 25300 et seq., or common law for liability for response costs and/or response actions, with regard to releases or threatened releases of perchloroethylene and its breakdown products at, in, or from the Chico Southwest Plume.

12. **EFFECT OF CONSENT DECREE**

12.1 This Consent Decree constitutes the resolution of the Settling Defendants' liability to DTSC with respect to the Matters Addressed in a judicially approved settlement within the meaning of section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

12.2 Accordingly, upon entry of this Consent Decree as a consent decree of the Court, and provided that each Settling Defendant performs all of its obligations under this Consent Decree, each Settling Defendants shall be entitled, as of the date this Consent Decree is

1 entered as a consent decree of the Court, to protection against all claims for contribution,
2 pursuant to section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for the Matters Addressed by
3 this Consent Decree (as described in section 9), to the fullest extent permitted by law.

4 12.3 Except as specifically provided in this Consent Decree, nothing in this
5 Consent Decree is intended, nor shall be construed, to waive, release, or otherwise affect any
6 right, claim, or cause of action held by any party to this Consent Decree against, or to provide a
7 covenant not to sue to, any third person not a party to this Consent Decree, or to in any way
8 limit, restrict, or impair the right of any party to this Consent Decree to assert rights, claims,
9 causes of actions, and defenses against any third person not a party to this Consent Decree,
10 including without limitation, the right to seek payment, reimbursement, contribution, or
11 indemnity from such persons for obligations incurred or to be incurred, or actions taken or to be
12 taken, under this Consent Decree. Except as specifically provided in this Consent Decree,
13 DTSC and the Settling Defendants expressly reserve any rights, claims, or causes of actions they
14 might have against any third person not a party to this Consent Decree.

15 12.4 This Consent Decree is contingent and dependent on all of its terms being
16 approved and entered by the Court. If the Court does not approve and enter this Consent
17 Decree, DTSC and the Settling Defendants reserve all of their respective rights, remedies, and
18 defenses.

19 12.5 This Consent Decree is not intended, nor shall it be construed, to limit or
20 otherwise affect DTSC's right to select a remedial action for the Chico Southwest Plume or the
21 Chico Central Plume.

22 13. **RETENTION OF RECORDS**

23 13.1 The Settling Defendants shall provide to DTSC, upon request, copies of
24 all documents and information within their possession or control or that of their contractors or
25 agents relating to the implementation of this Consent Decree, including, but not limited to
26 design specifications, reports of construction activities, contracts, invoices, sampling, analysis,
27 chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing,
28 correspondence, easements, permits, grants of access to public property, and city government

1 resolutions. Such records shall be preserved by the Settling Defendants until 10 years after the
2 Effective Date, or 10 years after creation of a record or document, whichever is later.

3 13.2 The Settling Defendants may assert that certain documents, records, and
4 other information are privileged under the attorney-client privilege or any other privilege
5 recognized by law. If the Settling Defendants assert such a privilege, they shall provide DTSC
6 with the following: (1) the title of the document, record, or information; (2) the date of the
7 document, record, or information; (3) the name and title of the author of the document, record,
8 or information; (4) the name and title of each addressee and recipient of the document, record,
9 or information; (5) a description of the subject of the document, record, or information; and (6)
10 the privilege asserted by the Settling Defendants. However, no documents, records, or other
11 information created or generated pursuant to the requirements of the Consent Decree shall be
12 withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion
13 of a document, the document shall be provided to DTSC in redacted form to mask the privileged
14 information only. The Settling Defendants shall retain all records and documents they claim to
15 be privileged until DTSC has had a reasonable opportunity to dispute the privilege claim and
16 any such dispute has been resolved in the Settling Defendants' favor.

17 14. **NOTIFICATION**

18 14.1. Notification to or communication between the parties to this Consent
19 Decree as required or provided for in this Consent Decree shall be addressed as follows (except
20 that information required to be sent to DTSC pursuant to section 6 shall be sent only to
21 Mr. Tjosvold):

22 As to DTSC:

23 Jim Tjosvold
24 Chief, Northern California Central Cleanup Operations Branch
25 Department of Toxic Substances Control
26 8800 Cal Center Drive
27 Sacramento, CA 95826-3200
28 Attn: Donald Mandel, Project Manager for Chico Southwest Plume
 facsimile: (916) 255-3696

Judith Tracy, Esq.
Office of Legal Counsel
Department of Toxic Substances Control
1001 "I" Street
P.O. Box 806
Sacramento, CA 95812
facsimile: (916) 323-5542

Timothy E. Sullivan, Esq.
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
facsimile: (510) 622-2270

As to the Peterses:

Jan A. Greben, Esq.
Greben & Associates
1332 Anacapa Street, Suite 110
Santa Barbara, CA 93101
facsimile: (805) 963-9098

14.2. Upon 10 days notice to the other party, a party to this Consent Decree may substitute another person for an addressee named above to receive notifications or communications as required or provided for in this Consent Decree.

15. **MODIFICATION OF CONSENT DECREE**

This Consent Decree may only be modified upon the written agreement of DTSC and the Settling Defendants and the approval of the Court, or upon order of the Court after noticed motion by a party to this Consent Decree.

16. **APPLICATION OF CONSENT DECREE**

This Consent Decree shall apply to and be binding upon DTSC, the Settling Defendants, and each of their respective successors and assigns. The provisions of this Consent Decree shall inure to the benefit of DTSC, the Settling Defendants, and each of their respective successors and assigns. The provisions of this Consent Decree shall also inure to the benefit of the employees, agents, and partners of the Settling Defendants, in their capacities as such.

17. **AUTHORITY TO ENTER**

Each signatory to this Consent Decree certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Decree, to execute it on behalf of the

1 party represented, and legally to bind that party.

2 18. **INTEGRATION**

3 This Consent Decree, including the exhibits and other materials incorporated
4 herein by reference, constitutes the entire agreement between DTSC and the Settling Defendants
5 and may not be amended or supplemented except as provided for in this Consent Decree.

6 19. **RETENTION OF JURISDICTION**

7 The Court shall retain jurisdiction of this matter for the purpose of enforcing the
8 terms of this Consent Decree.

9 20. **EXECUTION OF DECREE**

10 This Consent Decree may be executed in two or more counterparts, each of
11 which shall be deemed an original, but all of which together shall constitute one and the same
12 instrument.

13 21. **INTERPRETATION**

14 California law governs the interpretation of this Consent Decree. This Consent
15 Decree shall be deemed to have been drafted equally by all parties hereto.

16 22. **ATTORNEYS FEES AND COSTS**

17 As to each other, each party to this Consent Decree shall bear its own costs,
18 attorneys' fees, expert witness fees and all other costs of litigation. This paragraph shall have no
19 effect on the parties' right to recover these fees or costs from any other party.

20 23. **APPROVALS OF PARTIES**

21 Plaintiff DTSC consents to this Consent Decree by its authorized representative
22 as follows:

23 CALIFORNIA DEPARTMENT OF
24 TOXIC SUBSTANCES CONTROL

25 Dated: 4/10/08

26 /s/ James Tjosvold
27 James Tjosvold
28 Chief, Northern California-Central Cleanup
Operations Branch
California Department of Toxic Substances Control

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The Peterses consent to this Consent Decree:

RICHARD PETERS

DATED: 4/15/08

/s/ Richard Peters
by Ramona Peters, guardian ad litem

RAMONA PETERS

DATED: 4/15/08

/s/ Ramona Peters

PETERS FAMILY TRUST

DATED: _____

/s/ Ramona Peters
By:
Title:

APPROVED AS TO FORM:

Dated: 3/26/08

EDMUND G. BROWN JR.
Attorney General of the State of California
JANET GAARD
Chief Assistant Attorney General
KEN ALEX
Senior Assistant Attorney General
SALLY KNOX
Supervising Deputy Attorney General
CHRISTOPHER CROOK
KIRK McINNIS
Deputies Attorney General

By /s/ Timothy E. Sullivan
TIMOTHY E. SULLIVAN
Deputy Attorney General
Attorneys for Plaintiff California
Department of Toxic Substances Control

Dated: 4/16/08


By: /s/ Jan A. Greben
JAN A. GREBEN, ESQ.
Greben & Associates
Attorneys for Richard C. Peters and
Ramona W. Peters, individually and as
trustees of the Peters Family Trust

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The hearing set for May 20, 2008 at 11:00 a.m. is VACATED.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: May 8, 2008


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

